Editor's note: Appealed -- reversed, Civ.No. 78-161K (D.Wyo. Sept. 19, 1979), 477 F.Supp. 120

PEABODY COAL COMPANY

IBLA 78-449 Decided August 14, 1978

Appeal from decisions of Wyoming State Office, Bureau of Land Management, notifying permittees that coal prospecting permits had terminated and advance rentals were being refunded. W 13800, etc.

Appeal dismissed.

1. Administrative Procedure: Administrative Review -- Appeals -- Res Judicata -- Rules of Practice: Appeals: Generally -- Rules of Practice: Appeals: Dismissal

   Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that certain coal prospecting permits have terminated and that no preference right to a coal lease is attached to any of them, an unapproved assignee of the permits may not thereafter appeal the matter to this Board following Bureau of Land Management notification to the permittees of this Board's decision. The matter is res judicata and such subsequent appeal must be dismissed, absent compelling legal or equitable considerations.

APPEARANCES: Gregory J. Leisse, Esq., St. Louis, Missouri, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

In its decision, Peabody Coal Company, 34 IBLA 139 (1978), this Board held that granting an extension to a coal prospecting permit is discretionary to the Secretary of the Interior, so any such applications for extension were not "valid existing rights" within the context of the Federal Coal Leasing Amendments Act of 1975, 90 Stat. 1083, and as that Act repealed the Department's authority to issue

coal prospecting permits, the Bureau of Land Management (BLM) properly refused to grant extensions to coal prospecting permits W 13800, W 13801, W 14277, W 20057, W 21119, W 24984, and W 24985. Implicit in the decision was the holding that the subject permits had each expired at the conclusion of its 2-year term. Peabody filed assignments to itself of the seven permits after the expiration of the 2-year term, but while applications for extension of the permits were pending before BLM. BLM took no action on the requests for approval of the assignments, pending disposition of the requests for extension of the permits.

Following the promulgation of Peabody, supra, BLM notified each permittee that his permit had been terminated on the records, and that refunds of the advance rental payments subsequent to the 2-year period of each permit had been authorized.

From these notices Peabody again appealed, asserting itself to be a party adversely affected by the "decision." The notices of appeal did not point out any error in the BLM "decision," but indicated that a statement of reasons in support of the appeal would be submitted within the 30-day period provided by 43 CFR 4.412. As the notices of appeal were received by BLM on May 26, 1978, the statement of reasons was required to be filed with this Board on or before June 26, 1978. By letter dated July 11, 1978, Peabody requested that the statement of reasons submitted with its earlier appeal, decided in Peabody Coal Company, 34 IBLA 139, be adopted as its reasons for the present appeal.

Peabody, in effect, is attempting to bring before this Board the same parties, the same events, the same issues, and the same permits that were disposed of in Peabody, supra. The action of BLM was merely a ministerial interpretation of this Board's holding in Peabody, supra.

[1] Where an appeal has been taken and a final Departmental decision has been reached, under the doctrine of administrative finality the principal of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same parties, the same permits, and the same issues. Donald W. Coyer, 36 IBLA 181 (1978); Dallas C. Qualman, 36 IBLA 119 (1978); Pekka K. Merkallio, 30 IBLA 157 (1977); United States v. Blythe, 16 IBLA 94 (1974), aff'd, Blythe v. Kleppe, Civ. No. 77-1446 (10th Cir., filed Nov. 16, 1977); Elsie Farrington, 9 IBLA 191 (1975), aff'd, Farrington v. Morton, Civ. No. S-2768 (D. Calif., filed Dec. 15, 1973); Eldon L. Smith, 6 IBLA 310 (1972); Eldon L. Smith, 5 IBLA 330, 79 I.D. 149 (1972); The Dredge Corporation, 3 IBLA 98 (1971); Gabbs Exploration Co., 67 I.D. 160 (1960), aff'd, Gabbs Exploration Co. v. Udall, 315 F.2d 27 (D.C. Cir. 1963), cert. den., 375 U.S. 822 (1963). This

appeal is clearly a case barred by the principle of res judicata, and for that reason, must be dismissed, as no compelling legal or equitable considerations have been shown.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Douglas E. Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Frederick Fishman
Administrative Judge